

## **Construction Stormwater General Permit – Final Tier II Antidegradation Plan**

**Background:** Federal regulations (40 CFR 131.12) and the Water Quality Standards for Surface Waters of the State of Washington (WAC 173-201A-300, 310, 320, 330) establish a water quality antidegradation program. The federally mandated program establishes three tiers of protection for water quality. These three tiers function 1) to protect existing and designated in-stream uses, 2) to limit the conditions under which water of a quality higher than the state standards can be degraded, and 3) to provide a means to set the very best waters of the state aside from future sources of degradation entirely.

WAC 173-201A-320 contains the Tier II antidegradation provisions for the state's surface water quality standards. <http://apps.leg.wa.gov/WAC/default.aspx?dispo=true&cite=173-201A-320>

A Tier II analysis is required when new or expanded actions are expected to cause a measurable change in the quality of a receiving water that is of a higher quality than the criterion designated for that waterbody in the water quality standards. WAC 173-201A-320(1). WAC 173-201A-320(3) defines a measureable change as specific reductions in water quality, and defines "new or expanded actions" as "human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003." This definition includes facilities that first began to discharge pollutants, or increased the discharge of pollutants, after July 1, 2003. The definition also applies to those facilities that discharged pollutants prior to July 1, 2003, but were regulated by Ecology for the first time after July 1, 2003. All applicants for coverage under the CSWGP have "the potential to cause a measurable change in the physical, chemical, or biological quality of a waterbody" and meet the definition of a "new or expanded action." Therefore, Ecology has prepared this Antidegradation Plan during the 2010 CSWGP development process to comply with the Tier II antidegradation rule (WAC 173-201A-320).

### **Formal Adaptive Process to Comply with WAC 173-201A-320(6):**

WAC 173-201A-320(6) states that "the antidegradation requirements of this section can be considered met for general permits and programs that have a formal process to select, develop, adopt, and refine control practices for protecting water quality and meeting the intent of this section. This adaptive process must:

- (i) Ensure that information is developed and used expeditiously to revise permit or program requirements.
- (ii) Review and refine management and control programs in cycles not to exceed five years or the period of permit reissuance.
- (iii) Include a plan that describes how information will be obtained and used to ensure full compliance with this chapter. The plan must be developed and documented in advance of permit or program approval under this section."

### **Permit Development Process**

Ecology uses a formal process to develop and reissue the CSWGP every five years. The process includes selecting, developing, adopting, and refining control practices to protect water quality and meet the intent of WAC 173-201A-320. All NPDES permits, including the CSWGP, are effective for a fixed term not to exceed five years (40 CFR 122.25). Each time Ecology reissues the CSWGP, it evaluates

the effluent limits and permit conditions to determine if it should incorporate additional or more stringent requirements<sup>1</sup>.

Ecology's evaluation includes a review of information on new stormwater pollution prevention and treatment practices. Ecology may incorporate these practices into the CSWGP as permit conditions or in support of effluent limits. This approach works to reduce the discharge of pollutants incrementally during each successive new five-year permit cycle. Sources of such information include, but are not limited to:

- **Public comments and testimony** provided during the public comment period on the draft permit. Ecology encourages the public to share what is working and what is not. Ecology uses this formal public process to review and refine stormwater management and control requirements in each successive permit.
- **Ecology's Stormwater Management Manuals (SWMMs)**. Ecology updates the SWMMs periodically based on new information and science. The updates include a public involvement process. The CSWGP requires Permittees to select BMPs from the most recent edition of the SWMMs (or approved equivalent SWMMs). Therefore, the BMPs contained in the updated SWMMs are adopted and used expeditiously to refine and improve the effectiveness of these stormwater controls to protect water quality and meet the intent of the anti-degradation provisions in the water quality standards.
- **Technology Assessment Protocol – Ecology (TAPE) process**. This formal process involves reviewing and testing treatment technologies for eventual adoption into Ecology's Stormwater Management Manuals. The TAPE process stimulates the development and use of innovative stormwater technologies, including chemical treatment systems (e.g., electrocoagulation, chitosan-enhanced sand filtration, etc.) used at construction sites covered under the CSWGP.<sup>2</sup>
- **US EPA Effluent Limitation Guidelines (ELGs)** (for example, 40 CFR Part 450 - Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category; Final Rule). Ecology and other NPDES permitting authorities are required to incorporate ELGs developed by the US Environmental Protection Agency (US EPA) into each general permit as it is renewed. Although Ecology's NPDES permit requirements are typically more stringent than US EPA ELGs, this is another formal process used to develop, adopt, select and refine control practices for protecting water quality and meeting the antidegradation provisions in the WQ standards.
- **Ecology stormwater staff** (inspectors, enforcement staff, permit writers and engineers) attends training and conferences, confers with regulatory agency staff nationally and locally; and reviews professional journals and scientific literature. Ecology conducts research on stormwater

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<sup>1</sup>Federal rules mandate that reissued or renewed permits be at least as stringent as the previous five-year permit cycle. [40 CFR 122.44 (1)(2)]

<sup>2</sup> Ten technologies are currently at various stages of the approval process. The City of Puyallup, University of Washington and Washington State University have received grant funding to establish the Washington Stormwater Center (WSC) and oversee the TAPE program. A "Board of Expert Reviewers (BER)" will accept new applications and review them according to the existing TAPE process.

management practices and the effect of stormwater discharges on water quality. Ecology uses its expertise in the field of stormwater management to adopt and refine stormwater controls and management practices in the SWMMs and CSWGP.

- **CSWGP requires adaptive management.** In addition to the formal programmatic improvements to the SWMM and CSWGP described above, both the Final 2005 CSWGP and proposed 2010 CSWGP contain an adaptive management process. The process requires Permittees to implement timely revisions to their Stormwater Pollution Prevention Plans (SWPPPs) when stormwater discharges exceed the turbidity and pH benchmarks. As such, stormwater controls on individual projects are subject to ongoing refinement (i.e., addition of new BMPs and/or enhancement of existing BMPs) that reduces the amount of pollutants that would otherwise be discharged to receiving waterbodies. In some cases, an industry or trade group may consult with Ecology to develop a set of effective BMPs or treatment devices and place these in a guidance manual. Ecology will seek public comment on these manuals before adoption.

### **Public Notice of the General Permit Antidegradation Plan and Individual Actions**

Since Ecology has chosen to address Tier II antidegradation in accordance with WAC 173-201A-320(6), Ecology will not perform site-specific analyses of each “new or expanded action” proposed for coverage under the permit. However, it is important that the public be able to weigh in on whether individual actions are “necessary and in the overriding public interest”. The antidegradation rule establishes a refutable presumption that they do, but only through a public notice process does the general public have an opportunity to question individual actions

Ecology will require the general permit applicant's public notice to include language regarding Tier II antidegradation. Specifically, when an applicant runs the public notice per WAC 173-226-130(5), the notice will include:

- All information currently required on the CSWGP application form (Notice of Intent) including name/location of the facility and the receiving water.
- The statement: "Any persons desiring to present their views to the Washington State Department of Ecology regarding this application, or interested in Ecology's action on this application, may notify Ecology in writing no later than 30 days of the last date of publication of this notice. Ecology reviews public comments and considers whether discharges from this project would cause a measurable change in receiving water quality, and, if so, whether the project is necessary and in the overriding public interest according to Tier II antidegradation requirements under WAC 173-201A-320. Comments can be submitted to: Department of Ecology, P.O. Box 47696, Olympia, WA 98504-7696 Attn: Water Quality Program, Construction Stormwater."